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SLYVIA LYN FRANCIS & ANOR v. KETUA PENGARAH PENDAFTARAN NEGARA & ORS

HIGH COURT MALAYA, KUALA LUMPUR
AMARJEET SINGH SERJIT SINGH J
[ORIGINATING SUMMONS NO: WA-24-24-04-2023]
B 18 NOVEMBER 2024

Abstract – *In order to qualify for Malaysian citizenship, the child must be born in Malaysia (jus soli criteria) and one of his/her biological parents was, at the time of his/her birth, a Malaysian citizen or permanently resident in Malaysia (jus sanguinis criteria). However, for a child born out of a wedlock, and hence, illegitimate at the time of birth, s. 17 of Part III of the Second Schedule of the Federal Constitution stipulates that 'father' in relation to a person who is illegitimate refers to his mother. And, where the citizenship of the mother could be ascertained, the child is not stateless and hence, the citizenship of the illegitimate child follows that of the mother's.*

CONSTITUTIONAL LAW: *Citizenship – Application for – Illegitimate children – Citizenship by operation of law – Children born to Malaysian father and Filipino mother – Biological parents not married at time of birth of children – Whether reference to 'parent' or 'father' in relation to illegitimate child to be construed as 'mother' – Whether requirement of jus soli and jus sanguinis fulfilled – Whether met qualification for citizenship by operation of law – Whether children stateless at time of birth – Whether citizenship followed that of mother's*

The plaintiffs were siblings who were born in Malaysia. However, at the time of their birth, their parents were not married. The plaintiffs' father was a Malaysian citizen, while their mother was a Filipino citizen. The first and second plaintiffs, who were now 24 and 21 years old, respectively, had been living in Malaysia throughout their whole lives. Since the plaintiffs' birth certificates showed that their nationality status were 'non-citizen', the plaintiffs filed the present originating summons ('OS') seeking a declaration of citizenship by operation of law pursuant to: (i) art. 14(1)(b) read with s. 1(a) of Part II of the Second Schedule of the Federal Constitution ('FC'); or (ii) art. 14(1)(b) read with ss. 1(e) and 2(3) of Part II of the Second Schedule of the FC read with Part III, s. 19B of the Second Schedule of the FC. In respect of (i), the plaintiffs submitted that an individual born in Malaysia whose parent was a Malaysian citizen was a citizen of this country by operation of law. Considering that the plaintiffs' father was a Malaysian citizen at the time of their birth, the plaintiffs had satisfied the qualification under s. 1(a) of Part II. Whereas regarding (ii), the plaintiffs argued that they were Malaysian citizens pursuant to art. 14(1)(b) read with ss. 1(e) and 2(3)

of Part II because within one year from the date of their birth, they had not acquired citizenship of another country. It was also argued that the words 'is to be treated' under s. 2(3) of Part II was a deeming provision which extended citizenship to 12 months and that there was no requirement to identify the child's biological parents in s. 1(e) of Part II. The burden of proof was on the defendants, *ie*, the Director General of National Registration Department, to show that the plaintiffs did not acquire citizenship of another country within one year from the child's date of birth. Other than that, the plaintiffs relied on *Madhuvita Janjara Augustin (Suing Through Next Friend, Margaret Louisa Tan) v. Augustin Lourdsamy & Ors* to contend that for children born in Malaysia who remained stateless for a year, they would be held as Malaysian citizens under s. 1(e) of Part II and that the criteria of lineage or more appropriately *jus sanguinis* would be irrelevant. In that case, the word 'parents' was also given an ordinary meaning; hence, the word included a person who brought up and cared for the child. In other words, the word 'parents' could not solely refer to a child's biological parents.

Held (dismissing OS):

(1) The plaintiffs, being illegitimate, resulted in the application of s. 17 of Part III in interpreting s. 1(a) of Part II. According to the Federal Court in *CTEB & Anor v. Ketua Pengarah Pendaftaran Negara, Malaysia & Ors*, s. 17 of Part III is clear and unambiguous, in that, the reference to 'parent' or 'father' in relation to an illegitimate child is to be construed as 'mother'. And an illegitimate child's citizenship follows the citizenship of the mother. Therefore, for a person to fulfil the requirement under s. 1(a) of Part II, *ie*, at the time of the person's birth, one of his parents is a Malaysian citizen or permanently resident in the Federation, it must be shown that one of his biological parents (if he was born legitimate) or his biological mother (if he was born illegitimate) is a Malaysian citizen or permanently resident in the Federation. In the instant case, considering that the plaintiffs' biological parents were never married, the plaintiffs were illegitimate children. That caused their citizenship to follow that of the mother's. Thus, the declarations sought could not be granted. (paras 24, 27-28, 30 & 31)

(2) In respect of the burden of proof, the Court of Appeal in, among others, *Tan Soo Yin v. Registrar-General Of Births And Deaths, Malaysia* ('*Tan Soo Yin*'), held that the burden lay on the persons asserting that the qualification of citizenship by operation of law was satisfied. It was not sufficient to refer s. 2(3) of Part II to merely say that the plaintiffs had not acquired citizenship of any country one year from the date of their birth. All that sub-s. (3) does is to treat a person as having any citizenship at the time of birth which citizenship was subsequently acquired within one year from the date of birth either through: (i) any

provision corresponding with s. 1(c) of Part II; or (ii) some other means. In *Tan Soo Yin*, it was held that s. 2(3) operates as a presumption as to the time of acquisition of citizenship acquired within one year after birth as citizenship acquired at time of birth. Therefore, s. 2(3) has no application in the instant case. To ascertain whether the plaintiffs had discharged the burden that they were 'not born a citizen of any country', the court must examine the facts and evidence as disclosed in the affidavits filed. The affidavits revealed that the plaintiffs knew who their biological parents were. Their mother was a citizen of the Philippines. However, they failed to show that they did not acquire the citizenship of the Philippines or had applied for registration as citizens of the Philippines. The criteria of *jus sanguinis* was not satisfied. The intent of s. 1(e) renders inconsequential the fact that the plaintiffs did not hold any foreign citizenship since the crucial point to determine if they were 'not born a citizen of any country' was at the time of their birth. At birth, the plaintiffs were not stateless but followed the citizenship of their mother. Hence, the qualification for citizenship by operation of law had not been met. (paras 40-42 & 44-45)

Case(s) referred to:

CCH & Anor v. Pendaftar Besar Bagi Kelahiran Dan Kematian, Malaysia [2022] 1 CLJ 1 FC ***(refd)***

CTEB & Anor v. Ketua Pengarah Pendaftaran Negara, Malaysia & Ors [2020] 4 CLJ 597 CA ***(refd)***

CTEB & Anor v. Ketua Pengarah Pendaftaran Negara, Malaysia & Ors [2021] 6 CLJ 471 FC ***(foll)***

Lim Jen Hsian & Anor v. Ketua Pengarah Jabatan Pendaftaran Negara & Ors [2017] 8 CLJ 412 CA ***(foll)***

Madhuvita Janjara Augustin (Suing Through Next Friend, Margaret Louisa Tan) v. Augustin Lourdsamy & Ors [2018] 4 CLJ 758 CA ***(refd)***

Pendaftar Besar Kelahiran Dan Kematian, Malaysia v. Pang Wee See & Anor [2017] 7 CLJ 33 CA ***(refd)***

Tan Soo Yin v. Registrar-General Of Births And Deaths, Malaysia (Civil Appeal W-01(A)-548-10-2020) (Unreported) ***(foll)***

Than Siew Beng & Anor v. Ketua Pengarah Jabatan Pendaftaran Negara & Ors [2017] 8 CLJ 16 CA ***(foll)***

Legislation referred to:

Federal Constitution, arts. 14(1)(b), 15A, 31, Second Schedule Part II ss. 1(a), (c), (e), 2(3), Part III ss. 17, 19B

For the plaintiffs - Jasmine Wee Xing Yi & Agalya J Munusamy; M/s Azri, Lee Swee Seng & Co

For the defendants - Azza Azmi; SFC

Reported by Syamim Ariffin

JUDGMENT

Amarjeet Singh Serjit Singh J:

Introduction

[1] This is an originating summons wherein the plaintiffs, Sylvia Lyn Francis ("first plaintiff") and Selina Fuen Francis ("second plaintiff") sought declarations of citizenship by operation of law pursuant to:

(i) article 14(1)(b) read with s. 1(a) of Part II of the Second Schedule of the Federal Constitution; or

(ii) article 14(1)(b) read with ss. 1(e) and 2(3) of Part II of the Second Schedule of the Federal Constitution read with Part III s. 19B of the Second Schedule of the Federal Constitution.

[2] The other reliefs are consequential reliefs in the event any of the above-sought declarations are granted.

[3] On 17 July 2024, I dismissed the originating summons with no order as to costs. This judgment contains the reasons for my decision.

[4] For the sake of brevity, unless otherwise stated, all references in this judgment to "articles" and "Second Schedule" are to that of the Federal Constitution. Similarly, and unless otherwise stated, any references to Part II or Part III are to that of the Second Schedule of the Federal Constitution.

The Facts

[5] The facts are not in dispute. The first plaintiff was born on 29 July 2000 at Pantai Cheras Medical Centre, Kuala Lumpur, while the second plaintiff was born on 11 March 2003 at the same medical centre. Their biological father is one Xavia a/l SA Francis, a Malaysian citizen, and their biological mother is one Eugenia Santos, a non-citizen who holds a Philippine passport.

[6] The plaintiffs' biological father and biological mother were not married at the time of their respective births. On this information, the plaintiffs' birth certificates showed their nationality status as "non-citizen".

[7] It is noteworthy to mention that the plaintiffs made several applications under art. 15A, which read as follows:

> Subject to Article 18, the Federal Government may, in such special circumstances as it thinks fit, cause any person under the age of twenty-one years to be registered as a citizen.

[8] However, the applications were refused, although the plaintiffs were living in Malaysia their whole lives and are now 24 and 21 years old, respectively. What would require registration as a citizen under art. 15A is not known. Unfortunately, the applications under art. 15A is irrelevant to the application before me which only concerns art. 14(1)(b).

[9] One would be excused for supposing that the plaintiffs were at wit's end in making this application under art. 14(1)(b) for citizenship by operation of law after years of waiting. Before analysing the application, it is pertinent that the basic principle of the law on citizenship is stated.

Basic Principles Of The Law Of Citizenship

[10] Citizenship by operation of law has been declared by the Federal Court as a fundamental right and all related bodies are bound by to comply with the dictates of art. 14(1)(b) read with any of the paragraphs of s. 1 of Part II. The provisions on citizenship, both substantively and procedurally, including interpretation of the citizenship provisions, are exclusively housed in the Federal Constitution and nowhere else. Being a fundamental right, it has been held that citizenship provisions must be construed as broadly as possible without changing or warping the 'base' meaning, while provisions which limit those rights must be construed as narrowly as possible. These principles can be found in the following two recent Federal Court cases: (i) *CTEB & Anor v. Ketua Pengarah Pendaftaran Negara, Malaysia & Ors* [2021] 6 CLJ 471; [2021] 4 MLJ 236 ("*CTEB*"); and (ii) *CCH & Anor v. Pendaftar Besar Bagi Kelahiran Dan Kematian, Malaysia* [2022] 1 CLJ 1 ("*CCH*").

[11] The Court of Appeal's decision in *Pendaftar Besar Kelahiran Dan Kematian, Malaysia v. Pang Wee See & Anor* [2017] 7 CLJ 33 is also instructive and provides as follows:

> [21] We must state here that the law on citizenship is contained, both procedurally and substantively in the Federal Constitution itself. There is no statute that was specially legislated to house the specific provision pertaining to citizenship. ... The Federal Constitution itself provides for the interpretation required in order to make clear what the words in the citizenship provisions are supposed to mean. In other words, the citizenship provisions in the Federal Constitution are exclusively housed in the Federal Constitution itself. The Federal Constitution, like most other written Constitutions, is interpreted not in the like manner in which other statutes are normally interpreted. In relation to the Federal Constitution, all other statutes are subsidiary legislations. Thus, the constitutionality of the Federal Constitution is considered from the perspective of the Constitution itself. It is not to be interpreted by reference to other statutes, *albeit* they were passed by Parliament.

[12] Article 14(1) states as follows:

> Subject to the provisions of this Part, the following persons are citizens by operation of law, that is to say:
>
> (a) every person born before Malaysia Day who is a citizen of the Federation by virtue of the provisions contained in Part I of the Second Schedule; and
>
> (b) every person born on or after Malaysia Day, and having any of the qualifications specified in Part II of the Second Schedule.

[13] According to art. 14(1)(b), one either satisfies the qualifications in s. 1 of Part II or does not. If the qualifications are not met, the person is not a citizen. Further, the time citizenship by operation of law is acquired automatically is at the time of birth where both *jus soli* and *jus sanguinis* are satisfied.

Decision Of The Court

[14] I will now address each ground under the following headings as follows.

Citizenship Article 14(1)(b) Read With Section 1(a) Of Part II

[15] The plaintiffs submitted that an individual born in Malaysia to a parent that is a Malaysian citizen is a citizen by operation of law under art. 14(1)(b) read with s. 1(a) of Part II. Therefore, their father, being a citizen of Malaysia at the time of birth, have met the qualification of s. 1(a) of Part II.

[16] I found that on the interpretation of the relevant provisions and the case law binding on me does not support the plaintiffs' position. The position is that whilst the father may be a Malaysian citizen, but if the biological parents were not married at the time of birth, the plaintiffs are not citizens of Malaysia. In the circumstances, the plaintiffs' case cannot succeed. My reasons are as follows.

[17] Section 1(a) of Part II provides as follows:

> Subject to the provisions of Part III of this Constitution and anything done thereunder before Malaysia Day, the following persons born before Malaysia Day are citizens by operation of law, that is to say:
>
> (a) Every person born within the Federation of whose parents one at least is at the time of birth either a citizen or permanently resident in the Federation.

[18] Article 31, which is in Part III of the Federal Constitution, provides as follows:

> Until Parliament otherwise provides, the supplementary provisions contained in Part III of the Second Schedule shall have effect for the purposes of this Part.

[19] Section 17 of Part III provides as follows:

> For the purposes of Part III of this Constitution references to a person's father or to his parent, or to one of his parents, are in relation to a person who is illegitimate to be construed as references to his mother, and accordingly section 19 of this Schedule shall not apply to such a person.

[20] This means that s. 1(a) is subject to the provisions of Part III of the Second Schedule in its construction. The provisions of interpretation in Part III are to assist in the interpretation of s. 1(a) of Part II. So, if the criteria

A embedded in s. 1(a) of Part II, read with the relevant provisions of Part III of the Second Schedule, are not satisfied, a person cannot qualify as a citizen by operation of law. One either fulfils or does not fulfil the criteria.

[21] Section 1(a) of Part II has set out two criteria to be fulfilled to qualify as a citizen: (i) that the person was born in Malaysia; and (ii) that the person's B parents one at least is at the time of birth either a citizen or permanently resident in Malaysia. The Federal Court in the *CCH* case in interpreting s. 1(a) of Part II said:

> Section 1(a) of Part II very clearly adopts the concepts of *jus soli* (citizenship based on birthplace) and *jus sanguinis* (citizenship based on C blood relation).

[22] In *CTEB*, both the majority and minority judgments approved the following exposition by Abang Iskandar JCA (as His Lordship then was) in *Pang Wee See* on what *jus soli* and *jus sanguinis* entail and how they apply:

> D [29] In determining the citizenship of a person, two concepts are commonly applied, namely the concept of *jus soli* and the concept of *jus sanguinis*. *Jus soli* which means 'right of the soil', and commonly referred to as birthright citizenship, is the right of anyone born in the territory of a state to nationality or citizenship. The determining factor being the place or territory where a person was born. In the case of *jus sanguinis*, which E in Latin means 'right of blood', is a principle of nationality law by which citizenship is not determined by place of birth but by having one or both parents who are citizens of the state. Viewed from the context of these two concepts, we are of the considered opinion that art. 14(1)(b) read with s. 1(a), Part II, Second Schedule of the Federal Constitution is a provision which is anchored on the elements of *both the concepts of jus sanguinis and* F *of jus soli, whereby citizenship of a person is traceable to the place of birth namely, Malaysia, as well as Malaysian citizenship of one of the person's parents (the right of blood) at the time of the person's birth*, in order to be a Malaysian citizen by operation of law, under art. 14(1)(b) read with s. 1(a), Part II, Second Schedule of the Federal Constitution.
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> (emphasis added)

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[23] The Court of Appeal in *Pang Wee See* was dealing specifically with s. 1(a) of Part II of the Second Schedule and opined that to qualify for citizenship apart from being born in Malaysia (the *jus soli* criteria), it must be shown that one of that person's biological parents (the *jus sanguinis* H criteria) was at the time of birth a Malaysian citizen or permanently resident in Malaysia. The court said that the phrase, "is at the time of the birth" in para. (a) of s. 1 categorically refers to the biological parent of the person. In that case, the Court of Appeal held that adoptive parents could not fulfil the biological or *jus sanguinis*, criterion as envisaged under s. 1(a) of Part II of the Second Schedule.

I

[24] The requirement in issue in the instant case is whether the plaintiffs qualify as citizens under s. 1(a) of Part II, *ie*, whether at the time of their birth, one of their parents was a Malaysian citizen or permanently resident in the Federation. However, the plaintiffs' parents were never married. The plaintiffs', being illegitimate, resulted in the application of s. 17 of Part III in interpreting s. 1(a) of Part II.

[25] Section 17 of Part III reads as follows:

> For the purposes of Part III of this Constitution references to a person's father or to his parent, or to one of his parents, are in relation to a person who is illegitimate to be construed as references to his mother, and accordingly section 19 of this Schedule shall not apply to such a person.

[26] The Court of Appeal in *CTEB & Anor v. Ketua Pengarah Pendaftaran Negara, Malaysia & Ors* [2020] 4 CLJ 597 held that:

> [6] Reading the above-cited provisions, we find there will not be any problem if a child is born legitimate to a father who is a Malaysian citizen even if he is born outside the Federation. But in the instant appeal, the child was born out of wedlock. He was illegitimate at the time of his birth. So there comes the problem. Section 17 of Part III of the Second Schedule specifically stipulates that 'father' in relation to a person who is illegitimate refers to his mother.

[27] The Federal Court in *CTEB*, which decision binds me, held that s. 17 of Part III is clear and unambiguous, in that, the reference to "parent" or "father" in relation to an illegitimate child is to be construed as "mother". Therefore, an illegitimate child's citizenship follows the citizenship of his mother. The position was stated as follows by the Federal Court:

> [156] Section 17 provides for reference to the 'father' of an illegitimate child to refer to his 'mother'. The only clear meaning to be concluded therefore is that the child's citizenship follows that of his mother. There is nothing ambiguous about s. 17 to permit other rules of interpretation.

[28] Therefore, for a person to fulfil the requirement, *ie*, at the time of the person's birth, one of his parents is a Malaysian citizen or permanently resident in the Federation, it must be shown that one of his biological parents (if he was born legitimate) or his biological mother (if he was born illegitimate) is a Malaysian citizen or permanently resident in the Federation.

[29] The Court of Appeal in *Lim Jen Hsian & Anor v. Ketua Pengarah Jabatan Pendaftaran Negara & Ors* [2017] 8 CLJ 412 was of the same view and which view was adopted by the Federal Court in *CTEB*. There, it was said:

> [38] The second appellant's lineage would only be traceable to his Malaysian biological father provided that his parent was in a lawful marriage. In the case of an illegitimate child, the word 'parent' is construed to refer to his biological mother. Section 17 of Part III of the Federal Constitution states as follows: ...

[30] It is trite for the interpretation of s. 1(a) of Part II that the marital status of the biological parents of the plaintiffs at the time of their birth must be ascertained. If the plaintiffs are born out of wedlock, and thus illegitimate at the time of their birth, the word "parents", according to s. 17 of Part III is to be construed as "mother". In the instant case, the plaintiffs' biological father and biological mother were never married. The plaintiffs are, in the circumstances, illegitimate children, and therefore their citizenship followed that of their mother's.

[31] For the above reasons, the declaration sought cannot be granted.

Citizenship Article 14(1)(b) Read With Section 1(e) Part II

[32] It was next contended that the plaintiffs are citizens pursuant to art. 14(1)(b) read with ss. 1(e) and 2(3) of Part II. It was submitted that the plaintiffs did not acquire citizenship of another country within one year from the date of birth and were, therefore, citizens of Malaysia.

[33] Section 1(e) of Part II provides as follows:

> Subject to the provisions of Part III of this Constitution and anything done thereunder before Malaysia Day, the following persons born before Malaysia Day are citizens by operation of law, that is to say:
>
> (e) Every person born within the Federation who is not born a citizen of any country otherwise than by virtue of this paragraph.

While s. 2(3) of Part II states:

> For the purposes of paragraph (e) of section 1 a person is to be treated as having at birth any citizenship of which he acquires within one year afterwards by virtue of any provision corresponding to paragraph (c) of that section or otherwise.

[34] The plaintiffs submitted that the words "is to be treated" is a deeming provision that extends citizenship to 12 months and that there is no requirement to identify the child's biological parents in s. 1(e) of Part II. It was further submitted that the burden of proof is on the defendants to show that the plaintiffs did not acquire citizenship of any other country within one year from the child's date of birth.

[35] The plaintiffs also relied on *Madhuvita Janjara Augustin (Suing Through Next Friend, Margaret Louisa Tan) v. Augustin Lourdsamy & Ors* [2018] 4 CLJ 758 where it was held that a child born in Malaysia who remains stateless for a year is held to be a citizen under s. 1(e) of Part II and that the criteria of lineage or, more appropriately, *jus sanguinis* is irrelevant. It was submitted that the Court of Appeal gave the ordinary meaning to the word "parents", which includes a person who brings up and cares for the child. Therefore, the word parents cannot solely refer to a child's biological parents.

[36] However, the Court of Appeal in *Lim Jen Hsian & Anor v. Ketua Pengarah Jabatan Pendaftaran Negara & Ors* [2017] 8 CLJ 412, *Than Siew Beng & Anor v. Ketua Pengarah Jabatan Pendaftaran Negara & Ors* [2017] 8 CLJ 16; [2017] 5 MLJ 662 and *Tan Soo Yin v. Registrar-General Of Births And Deaths, Malaysia* (dated 22 November 2022, unreported, Civil Appeal W-01(A)-548-10-2020) held that the concept of *jus sanguinis* is embedded in para. (e) of s. 1 of Part II and that the burden of proof lies on the applicant to fulfil both requirements. Needless to say, I am bound by these decisions.

[37] In *Lim Jen Hsian,* the Court of Appeal said:

> [27] Article 14(1)(b) of the Federal Constitution encapsulates the requirement of citizenship by *jus soli ie*, by the place of birth; while s. 1(e) of Part II of the Second Schedule of the Federal Constitution ("not born a citizen of any country") encapsulates the requirement of citizenship by *jus sanguinis ie*, by blood or lineage.
>
> [28] Thus, it would appear that the second appellant would need to satisfy both the requirements of *jus soli* and *jus sanguinis* in order to fulfil the requirements of art. 14(1)(b) and s. 1(e) of Part II, Second Schedule of the Federal Constitution.

[38] The criteria of *jus sanguinis* in s. 1(e) of Part II is the critical issue in the instant case and I am guided by another decision of the Court of Appeal, namely, *Than Siew Beng,* where it was held as follows:

> [27] The contentious issue is in respect of the requirement of *jus sanguinis* in s. 1(e) of Part II of the Second Schedule of the Federal Constitution as expressed by the phrase, "who is not born a citizen of any country". For the purposes of this requirement, **the material time to determine the status of the second appellant's lineage is at the time of his birth.**
>
> [35] A plain reading of s. 1(e) **"was not born a citizen of any country" refers to the relationship of the second appellant to his biological and lawful parents at the time of his birth.** The only available documentary evidence – the second appellant's birth certificate (exh. TSB6) contained no information pertaining to the biological parents and the relevant particulars were endorsed with "Maklumat Tidak Diperolehi".
>
> [36] Since the identity of the child's lawful and biological parents are unknown, it is not possible to determine the lineage of the second appellant that would enable the second appellant to be conferred citizenship by lineage, *ie*, *jus sanguinis*.
>
> [37] Thus in our view, the second appellant has not fulfilled the requirement to be a citizen by operation of law within the meaning of s. 1(e) of Part II of the Second Schedule of the Federal Constitution.
>
> (emphasis added)

[39] The Court of Appeal *Tan Soo Yin* reaffirmed the legal position enunciated in *Lim Jen Hsian* and *Than Siew Beng* and said:

A [18] Thus, the fact the Appellant was born within the Federation only satisfies the requirement of *jus soli* and in the absence of the identity of the Appellant's biological parents, *jus sanguinis* is not satisfied and one cannot determine whether she is stateless for the purpose of paragraph 1(e) of Part II, Second Schedule of the Federal Constitution.

B [19] For completeness, we would also state that we agree with SFC in that paragraph 2(3) Part II Second Schedule of the Federal Constitution only operates to treat any citizenship which a person acquires within 1 year after his birth as a citizenship that he acquires at the time of his birth. In other words, the said provision operates as a presumption as to time of acquisition of citizenship, to treat any citizenship acquired within
C 1 year after birth as citizenship acquired at the time of birth.

[40] This then brings me to the burden of proof. The Court of Appeal in *Lim Jen Hsian*, *Than Siew Beng*, and *Tan Soo Yin* held that the burden lies on the persons asserting that the qualification of citizenship by operation of law is satisfied. It suffices to reproduce the relevant paragraph in *Tan Soo Yin*
D on this point:

[28] In our view, the burden of proving that the Appellant "was not born a citizen of any country" lies on the Appellant. The Appellant must prove that at the time of her birth, based on her lineage, she does not acquire citizenship of any country.

E **[41]** In this regard, it is not sufficient to refer to sub-s. 2(3) of Part II to merely say that the plaintiffs have not acquired citizenship of any country one year from the date of their birth. That is not the purpose of the subsection. All that sub-s. (3) does is to treat a person as having any citizenship at the time of birth which citizenship was subsequently acquired
F within one year from the date of birth either through: (i) any provision corresponding with s. 1(c) of Part II or (ii) some other means. In *Tan Soo Yin,* the Court of Appeal held that s. 2(3) operates as a presumption as to the time of acquisition of citizenship and to treat any citizenship acquired within one year after birth as citizenship acquired at the time of birth. Based on this
G reasoning, the s. 2(3) has no application in the instant case.

[42] In order to ascertain whether the plaintiffs have discharged the burden that they were 'not born a citizen of any country', it behoves on me to examine the facts and evidence as disclosed in the affidavits filed. The affidavits reveal that the plaintiffs know who the biological parents are. Their
H mother was a citizen of the Philippines. They failed to show that they did not acquire the citizenship of the Philippines. They did not even apply for registration as citizens of the Philippines, following their mother's citizenship. In the circumstances, the criteria of *jus sanguinis* is not satisfied.

[43] The Court of Appeal in *Lim Jen Hsian* established as follows:
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The second appellant had to satisfy both the requirements of *jus soli* and *jus sanguinis* in order to fulfil the requirements of art. 14(1)(b) and s. 1(e) of Part II, Second Schedule of the FC. The second appellant was born after Merdeka Day in the Federation in Kuala Lumpur, Malaysia, thus, fulfilling the requirement of *jus soli* in art. 14(1)(b) of the FC. The second appellant's lineage would only be traceable to his Malaysian biological father provided that his parents were in a lawful marriage. However, he did not acquire citizenship from his Malaysian biological father. He acquired the citizenship of his biological mother who was a Thai national. Therefore, it could not be said that he was one 'who is not born a citizen of any country' pursuant to s. 1(e) of Part II, Second Schedule of the FC.

[44] The intent of s. 1(e) renders inconsequential the fact that the plaintiffs do not hold any foreign citizenship since the crucial point to determine if they are 'not born a citizen of any country' is at the time of her birth. At birth, the plaintiffs were not stateless. They followed the citizenship of their mother.

Conclusion

[45] In the premise of the foregoing, the qualification for citizenship by operation of law has not been met and accordingly, the originating summons was dismissed with no order as to costs.